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Chairperson: Mr. Al Bayati ..... (Iraq)

Contents

Agenda item 79: The rule of law at the national and international levels (*continued*)

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The meeting was called to order at 10.10 a.m.

Agenda item 79: The rule of law at the national and international levels (*continued*) (A/63/64, A/63/69-S/2008/270, A/63/154, A/63/226, A/63/281-S/2008/431 and A/C.6/63/2)

1. **Ms. Naidu** (South Africa) said that her country was particularly interested in the agenda item because, before democracy and a constitutional legal system had been established there in 1994, it had directly experienced a situation characterized by complete disregard for human rights and the rule of law. The instructive report of the Secretary-General on the rule of law at the national and international levels (A/63/64) showed how the impact of international law on national justice systems created a domestic awareness that rights must be protected by law. Any dispute related to such rights must not be resolved by arbitrary discretion but submitted for adjudication to a competent, impartial and independent tribunal. State action must be justifiable, amenable to analysis and based on a system whose operation could be tested rationally for compliance with the law.

2. Her delegation therefore commended the work of the Rule of Law Coordination and Resource Group and supported both the provision of capacity-building assistance to national institutions and the funding of the Rule of Law Unit from the regular budget of the United Nations.

3. Impunity for crimes against humanity, genocide, war crimes and other crimes of concern to the international community must not be tolerated. As a founding member of the International Criminal Court, South Africa cooperated fully with the ad hoc tribunals set up by the Security Council.

4. **Mr. Alday González** (Mexico) said that it was particularly important that the work of the General Assembly should promote the rule of law at the national and international levels, thereby consolidating the Organization's role in that respect. There was no doubt that in the past two years, progress had been achieved at the institutional level through the setting up of the Rule of Law Coordination and Resource Group and the Rule of Law Unit. The Secretary-General's reports on the rule of law at the national and international levels (A/63/64) and on strengthening and coordinating United Nations rule of law activities (A/63/226) were useful in that they contained an inventory of activities and identified areas where the international community could improve the efficiency of its endeavours.

5. Strengthening the rule of law must be predicated on a recognition of common values. States could contribute by genuinely respecting international law and fostering mechanisms, such as international courts and tribunals, which made possible the assertion of human rights. The Secretary-General's recommendations to Member States would help to build a just, secure and peaceful world governed by the rule of law.

6. While at the national level, the activities and areas identified were directly linked with common values reflected in every State's international obligations to promote development, democracy, human rights, justice and environmental protection, the success of any programme designed to further the rule of law would depend on a thorough grasp of the political context and on the extent to which the programme was based on national needs and aspirations rather than being imposed from the outside.

7. One major challenge resulting from the multiplicity of the Organization's activities was that of securing an efficient response to threats to the rule of law throughout the world. To that end, it would first be necessary to coordinate the work of the 40 entities working on the subject and for the United Nations to adopt a coherent, effective internal policy that avoided duplication. As the Rule of Law Coordination and Resource Group and the Rule of Law Unit played a vital role in that respect, he hoped that the Unit would soon have the basic tools to be fully operational.

8. His delegation also hoped that it would be possible to conduct a focused discussion of the topic in the Committee. While the Secretariat's input was extremely useful, Member States policies for fostering the rule of law at the national and international levels must be rooted in the work already done by the Organization. He trusted that at its next session, the Committee would be able to complete a substantive dialogue in order to reach agreement on guidelines for the building of a more just world based on international law.

9. **Mr. Garayev** (Azerbaijan) said that United Nations rule of law activities should be coordinated more closely. He therefore looked forward to further implementation of the workplan of the Rule of Law Coordination and Resource Group and the Rule of Law

Unit. While he welcomed the realistic recommendations contained in the final report from the Austrian Initiative 2004-2008 on the United Nations Security Council and the rule of law (A/63/69-S/2008/270), some of them might be rather difficult to implement.

10. His Government firmly supported the progressive development and codification of international law. A culture of impunity and a lack of accountability, even for the most serious international crimes, was still undermining the rule of law. In order to strengthen national capacity to investigate and prosecute international crimes, there was a need for renewed efforts to bolster universal justice by providing practical capacity-building support and to consolidate national and international justice and accountability mechanisms.

11. The world was undergoing a period of dramatic change that was weakening the basis of the international legal order and threatening the integrity and stability of States, yet it was the duty of all States to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations and to settle their international disputes by peaceful means in such a way that international peace, security and justice were not endangered. Armed conflicts stemming from movements seeking to detach part of a State's territory in order that it might become an independent entity or be incorporated into another State constituted the most difficult cases because they usually led to large-scale military action and extensive violations of human rights and international humanitarian law. Moreover, the secondary effects of serious breaches of obligations flowing from peremptory norms of public international law could affect all States, which, since they had a legal interest, were entitled to invoke the responsibility of the State which had breached its *erga omnes* obligations. States must join together to secure an end to such breaches by lawful means.

12. It was generally recognized that the category of serious breaches of obligations under peremptory norms of general international law included, inter alia, aggression, genocide and racial discrimination and that, pursuant to the articles on responsibility of States for internationally wrongful acts, no State should recognize as lawful a situation created by a serious breach, or render aid or assistance in maintaining that situation. Moreover, according to the customary norms and conventional rules of international criminal law, certain acts were regarded as international criminal offences and responsibility for them was borne on an individual basis by those participating in the said acts, their accomplices and their accessories.

13. Despite the consensus on fundamental values reflected in the Universal Declaration of Human Rights, the silence on human rights violations maintained in certain international criminal proceedings accentuated the gap between theoretical legal values and harsh reality that impeded the application in practice of international law standards. If a consistent effort were to be made to uphold universally accepted values, it was essential to curb any attempt to reject those values and it was vital to counter lawlessness by prosecuting offenders.

14. All States were bound by the generally accepted norms and principles of international law, especially those related to respect for sovereignty and territorial integrity, the inviolability of internationally recognized borders and non-interference in internal affairs. Faithful observance of the generally accepted norms and principles of international law concerning friendly relations and cooperation among States, and the fulfilment in good faith of the obligations assumed by States, were of the greatest importance for the maintenance of international peace and security. To that end, priority must go to strengthening international law and enhancing its role and effectiveness in international relations; more was to be gained by working together to improve the international legal system than by demolishing it.

15. In order to facilitate the Committee's work on the topic, it would be wise to base the choice of sub-topics for a more focused discussion on a hierarchy of norms beginning with *lex generalis* and ending with *lex specialis*.

16. **Archbishop Migliore** (Observer for the Holy See) said that the comprehensive inventory of rule of law initiatives being undertaken at the United Nations showed that the rule of law had grown in importance as a pillar of international development. At its core, it was the mechanism for effective recognition of the dignity of all persons, regardless of their social, economic or political status. In a cultural context in which law was often perceived as respect for formal procedures, the rule of law in itself might be insufficient to defend the dignity of the human person, which must be safeguarded in culture, in the public mentality and in

the conduct of society in order to be protected by law. Although not in itself sufficient, the rule of law remained an indispensable instrument and assigned States the task of allowing and facilitating realization of the transcendent ends to which people were destined. It was implied in the Universal Declaration of Human Rights, which called upon all nations to organize the relationship of persons and society with the State on the basis of fundamental human rights.

17. While the responsibility of States entailed their primary obligation to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, the rule of law allowed the international community to intervene when a State was unable or unwilling to exercise that fundamental responsibility. The capacity to intervene was not limited to actions taken by the Security Council or through the use of force, but encompassed international cooperation to help States develop the necessary capacity and legal expertise to exercise their responsibilities. The strengthening of national legal structures would help States avert atrocities by establishing mechanisms that promoted justice and peace, ensured accountability and recourse under the law, provided the foundation for a stable economy and protected the dignity of every person. Too often the concept of the rule of law was applied solely to political or legal matters in post-conflict settings; the current economic crisis, however, showed that it could also be helpful in the promotion of fair and stable economic development.

18. One area in which the United Nations served as a forum for enhancing the rule of law was in the elaboration of international treaties and conventions, thanks to its ability to bring people together and focus attention on international norms. When the Organization's agencies and monitoring bodies implemented and enforced international norms, however, it was important for them to respect the intent of the States parties. A treaty body system that moved away from the original intent of the parties and expanded its mandates beyond the power conferred by States risked undermining its own credibility and legitimacy and could discourage States from becoming parties to conventions. The contribution of the United Nations would be appreciated whenever the rule of law was translated from discussion of norms and values into tangible results for those who sought justice.

19. **Mr. Civili** (Observer for the International Development Law Organization) said that as the only intergovernmental organization with observer status that was entirely devoted to advancing the rule of law and its contribution to development, the International Development Law Organization (IDLO) regarded the Committee's annual debate on the rule of law as an opportunity to share the knowledge, insights and lessons it had drawn from its efforts and to learn what directions its activities could most profitably take.

20. In the past year IDLO had completed the transition to a new governance structure, which, while reaffirming the technical, apolitical character of its interventions, placed the direction of the organization firmly in the hands of its member States through its Assembly of Parties. Along with new governance structures, IDLO had designed a new four-year strategic plan and a new management plan, to be considered by the Assembly of Parties in November 2008. The new model that was emerging recognized societal demand as the main driver of legal change and revalidated the organization's mandate and working methods, which revolved around a multi-stakeholder approach, national ownership and a vision of IDLO as primarily an enabler. IDLO had also refocused its strategic objectives: support for the elaboration of national development agendas and peacebuilding plans in the legal and justice sector, for legal empowerment of vulnerable populations and for actors in addressing legal and regulatory aspects of emerging global issues constraining development; establishment and nurturing of thematic networks in the legal area; and dissemination of best practices for legal, regulatory and institutional reform.

21. The Committee's deliberations had provided IDLO with valuable guidance and inspiration. They had reinforced some of its traditional principles and practices, such as national ownership of international assistance and an emphasis on South-South cooperation, and had inspired it to introduce rigorous results-based management practices and to strengthen significantly its monitoring and evaluation capacities. One clear message IDLO had taken from the Committee was the need for inter-agency coordination; it intended to integrate the guiding principles set forth in the Secretary-General's report (A/63/226) into its own strategic framework.

22. Recent developments had enhanced the organization's ability to contribute to coordination

efforts. In July 2008, it had signed an agreement with the United Nations Development Fund (UNDP) granting IDLO implementing partner status. It had recently been asked by the Peacebuilding Commission to join an inter-agency mission to Guinea-Bissau on the rule of law and security sector reform, and it hoped in the future to make further contributions to the peacebuilding efforts of the Commission. The inventory of United Nations rule of law activities contained in document A/63/64 illustrated the broad range of United Nations interventions in that area. Complementing that work, IDLO was currently updating its online directory of ongoing international assistance in the rule of law from all sources.

23. IDLO strongly supported the priority that the United Nations had increasingly been giving to promotion of the rule of law as an integral part of the security and the development dimensions of its mission. By working with the Rule of Law Unit and other United Nations partners, it hoped to make a small but distinct contribution to that endeavour. Indeed, the effort to integrate objectives and modalities of operation in the legal and socio-economic spheres was what defined the role of IDLO; by sharing its insights and experience in its observer capacity, it could be of value to the international community and to the United Nations. He hoped that United Nations Member States that were not yet members of IDLO but placed the rule of law high among their priorities would consider joining his organization.

24. **Ms. Houston** (Observer for the Asian-African Legal Consultative Organization) said that the core objective of the Asian-African Legal Consultative Organization (AALCO) was to build the legal capacity of its member States. Without strong and efficient legal systems at all levels of government, peaceful cooperation among States and sustainable development were problematic. The rule of law protected the rights of citizens and created order and predictability regarding the functioning of nations and the global society.

25. For the rule of law to be effective, information must be universally available. Developing nations and economies in transition required assistance in order to expand their electronic legal access and knowledge systems. In some parts of the world, the public was charged a fee to access public legal documents on the pretext that they were protected by intellectual property rights; however, such a system undermined the rule of law by preventing universal access to the information.

26. In a time of economic crisis, the rule of law could provide stability to international financial institutions. At another level, small farms and businesses in developing countries relied on the rule of law to provide the security to go forward with investment opportunities. The vagaries of world trade had made developing nations more aware of the benefits of increased reliance on local production, and the rule of law permitted an individual to engage in long-range planning with confidence in the stability of the current legal system.

27. In the face of unprecedented climate change, there was a need to strengthen legal frameworks to protect fragile ecosystems. Through commitment to United Nations conventions on environmental protection, the international community could help protect vulnerable populations, including small island nations disproportionately affected by climate change. Such new global issues would call for re-examination of the balance between developed and developing States and between national sovereignty and the rights of individuals, and would necessitate the pursuit of consensus on strengthening the rule of law.

The meeting rose at 10.50 a.m.